

RESOLUTION NO. _____

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI, FLORIDA,
PROVIDING FOR APPROVAL OF A MODIFICATION TO
THE BIFURCATED GROUND LEASE BETWEEN THE
CITY OF NORTH MIAMI, FLORIDA, THE OAKS I AT
BISCAYNE LANDING CONDOMINIUM ASSOCIATION,
INC., AND ROYAL OAKS LANE (BISCAYNE LANDING) -
NORTH MIAMI, LLC; AUTHORIZING THE CITY
MANAGER AND CITY ATTORNEY TO NEGOTIATE AND
EXECUTE THE MODIFICATION; PROVIDING FOR AN
EFFECTIVE DATE AND ALL OTHER PURPOSES.**

WHEREAS, the City of North Miami, Florida ("City"), and BLIA Developers, Ltd., a Florida limited partnership ("Original Tenant"), entered into a Bifurcated Ground Lease, dated October 18, 2005 ("Ground Lease"), pursuant to which Landlord leased the Real Estate (as defined in the Ground Lease) to Original Tenant, as indicated in the Memorandum of Lease, recorded in Official Records Book 23898, Page 1158, of the Public Records of Miami-Dade County, Florida ("County Records"); and

WHEREAS, the Ground Lease provided for, among other things, the leasing of five (5) percent residential units within any individual condominium and a gross sales price for each condominium unit at One Hundred Fifty Dollars (\$150.00) per saleable square foot; and

WHEREAS, Article II, Section 4 of the Ground Lease provides that "in the event that the Tenant elects to lease in excess of five (5) percent of the residential units within any individual condominium, Tenant must obtain prior written consent of the Landlord, such consent not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed"; and

WHEREAS, because of the downturn in the real estate market, the need has arisen to reconsider the 5% rental unit cap as well as the per saleable square footage for each condominium; and

WHEREAS, in order to properly respond to the current market conditions, the City desires to amend the Ground Lease to allow the leasing of units in excess of five (5) percent of the residential units within any individual condominium with respect to any existing or future leases for four (4) years and to reduce the saleable square footage per unit from One Hundred Fifty Dollars (\$150.00) to Eighty Dollars (\$80.00); and

H

WHEREAS, the Mayor and City Council believe that it is in the best interests of the residents and City to consent to the modification of the Ground Lease.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authorization to execute Consent and Modification of Lease Agreement. The Mayor and City Council of the City of North Miami, Florida, hereby approve the execution of a Consent and Modification to the Bifurcated Ground Lease Agreement, in substantially the attached form, (see Exhibit A).

Section 2. Authorization of City Manager and City Attorney. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to do all things necessary to effectuate the terms of the Lease Agreement, in accordance with the direction provided to City Administration, without the necessity of further action by the Mayor and City Council.

Section 3. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of January, 2013.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Marie Erlande Steril	_____ (Yes)	_____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Jean R. Marcellus	_____ (Yes)	_____ (No)

EXHIBIT A

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:

Douglas L. Noren, Esq.
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661

[Space Above Reserved for Recorder's Use]

CONSENT AND MODIFICATION TO BIFURCATED GROUND LEASE

THIS CONSENT AND MODIFICATION TO BIFURCATED GROUND LEASE (this "**Agreement**"), is made this ____ day of January, 2013 (the "**Effective Date**"), by and among the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation ("**Landlord**"), THE OAKS I AT BISCAYNE LANDING CONDOMINIUM ASSOCIATION, INC., a Florida not for profit corporation ("**Tenant**" or "**Association**"), and ROYAL OAKS LANE (BISCAYNE LANDING) – NORTH MIAMI LLC, a Delaware limited liability company ("**Owner**").

RECITALS

A. Landlord and BLIA Developers, Ltd., a Florida limited partnership ("**Original Tenant**") entered into a Bifurcated Ground Lease, dated October 18, 2005 ("**Ground Lease**"), pursuant to which Landlord leased the Real Estate (as defined in the Ground Lease) to Original Tenant.

B. The Ground Lease has been amended, supplemented and/or otherwise affected by (i) the Memorandum of Lease, dated October 18, 2005, made by and between Landlord and Original Tenant, recorded in Official Records Book 23898, Page 1158, of the Public Records of Miami-Dade County, Florida ("**County Records**"); (ii) the Bifurcated Ground Lease and Estoppel Agreement, dated October 18, 2005, made by and between Landlord, Original Tenant and Freemont Investment & Loan, recorded in Official Records Book 23898, Page 1162, of the County Records; (iii) the Letter Agreement, dated March 26, 2009, made by and between Landlord and Original Tenant; (iv) the Landlord's Estoppel, dated June 24, 2010, made by Landlord, recorded in Official Records Book 27336, Page 2215, of the County Records; and (v) the Landlord's Consent, dated June 24, 2010, made by Landlord, recorded in Official Records Book 27336, Page 2221, of the County Records.

C. Original Tenant, as "Developer", submitted its leasehold interest in the Real Estate to the condominium form of ownership pursuant to the Declaration of Condominium of The Oaks I Condominium (as amended, the "**Declaration**"), dated March 6, 2007 and recorded in Official Records Book 25427, Page 4613, of the County Records, under which The Oaks I Condominium ("**Condominium**") was established.

D. Under the Declaration, the Association was deemed "Tenant" under the Ground Lease and the Association assumed all of the rights and obligations of "Tenant" under the Ground Lease other than the obligation for payment of Annual Basic Rent (as defined in the Declaration), which, pursuant to the Ground Lease, remains the obligation of the individual condominium unit owners. The Ground Lease contemplated that a condominium association would become the "Tenant" when the Ground Lease was submitted to condominium ownership.

E. Owner is the owner of one hundred sixty (160) units in the Condominium (collectively, the "**Owned Units**").

NOW, THEREFORE, Landlord, Tenant and Owner agree as follows:

1. **Incorporation of Recitals; General Provisions.** The above recitals are true and correct. All capitalized terms in this Agreement shall have the same meaning as in the Ground Lease, except if otherwise noted. Except as amended by this Agreement, all of the terms of the Ground Lease shall remain in full force and effect. In the event of any conflict between the provisions of the Ground Lease and the provisions of this Agreement, this Agreement shall control.

2. **Waiver of 5% Rental Restriction.** Article II, Section 4 of the Ground Lease provides that "in the event that the Tenant elects to lease in excess of five (5) percent of the residential units within any individual condominium, the Tenant must obtain the prior written consent of the Landlord, such consent not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed." Landlord hereby consents to Tenant or Owner leasing in excess of five (5) percent of the residential units within any individual condominium with respect to any existing or future leases, for a period ending on the last day of the calendar month occurring forty-eight (48) months after the Effective Date. On or prior to the expiration of such forty-eight (48) month period, if Owner reasonably believes that continued leasing of the Owned Units is necessary based on then market conditions, Landlord will not unreasonably withhold, condition or delay its consent to an extension of Landlord's waiver of the five (5) percent leasing restriction in the Ground Lease. The parties acknowledge and agree that, if Tenant or Owner is in default or breach of the terms of this Agreement, and such default or breach continues for a period of thirty (30) days after written notice from Landlord, then the waiver described in this Section 2 shall be declared null and void, and cancelled immediately upon notice from Landlord to Tenant (provided that leases existing as of the date of such termination shall continue to be exempt and permitted hereunder).

3. **Rental Revenues.** Article II, Section 4 of the Ground Lease requires the payment to Landlord of a rental fee equal to four (4) percent of the gross revenues received as rent or its equivalent on any leased condominium units, net of certain taxes and other costs and expenses, as more particularly set forth in Article II, Section 4 (as adjusted, the "**Rental Fee**"). On the date hereof, and as a condition to the execution of this Agreement by Landlord, Owner shall pay to Landlord the amount of Thirteen Thousand Six Hundred Eighty-One Dollars (\$13,681) in full settlement of any Rental Fees owed to Landlord under the Ground Lease through December 31, 2012 with respect to the Owned Units. The calculation of such amount

owed by Owner is set forth in the attached Schedule 1 and each party hereto agrees that such calculation is final and binding on the parties, provided, however, that Owner represents and warrants that such calculation and the information set forth on Schedule 1 is complete and accurate. Notwithstanding anything to the contrary in the Ground Lease, Owner shall pay the Rental Fee with respect to any leased condominium units owned by Owner (based on actual in place rentals) to Landlord in arrears, commencing on February 15, 2013 (with respect to the Rental Fee due for January, 2013), and on a monthly basis thereafter within fifteen (15) days following the last day of the preceding month.

4. **Condominium Sales.**

(a) Article II, Section 4 of the Ground Lease requires the payment to Landlord of a sales fee equal to four (4) percent of the gross sales price, net of certain commissions and other closing costs and expenses, as more particularly set forth in Article II, Section 4 (as adjusted, the "**Sales Fee**"), with respect to the "first time sale" of each condominium unit and/or parking space in the Condominium. In consideration of Landlord entering into this Agreement, Owner has agreed to pre-pay the Sales Fee with respect to the Owned Units on the date hereof in the amount of Eight Hundred Eighty Thousand Dollars (\$880,000.00). Landlord agrees that no additional Sales Fee or any other fee shall be due to Landlord pursuant to the Ground Lease or otherwise upon the sale by Owner of any or all of the Owned Units.

(b) The minimum gross sales price for each condominium unit set forth in Article II, Section 4 of the Ground Lease is hereby reduced from One Hundred Fifty Dollars (\$150.00) per saleable square foot to Eighty Dollars (\$80.00) per saleable square foot.

5. **Re-Occupancy Inspection Requirement.** Within ten (10) days after written request from Owner with respect to any or all of the Owned Units, Landlord shall commence the Re-Occupancy Inspection (as required by the City Code of the City of North Miami, Florida) for such units, and shall use its best efforts to expeditiously complete such inspections. Upon satisfactory completion of its Re-Occupancy Inspection for each such unit, Landlord shall issue a Certificate of Re-Occupancy (as required by the City Code) with respect to the inspected Owned Units. After completion of the Re-Occupancy Inspection and issuance of a Certificate of Re-Occupancy for any Owned Unit at the Condominium, no additional Re-Occupancy Inspection shall be required at any time thereafter for such Owned Unit so long as such unit is still owned by Owner. The aggregate fee payable to Landlord for the Re-Occupancy Inspections and issuance of Certificates of Re-Occupancy for the Owned Units shall be \$1,860, not including any escrow payments that may be required to pay for the cure of any code violations in the applicable units.

6. **Condominium Amenities.** The Association agrees to make commercially reasonable efforts to construct additional amenities at the Condominium commensurate with the overall quality of the project known as The Oaks and consistent with amenities offered at similar projects in the same market (for example only and not as a requirement or limitation of what will be constructed, an exercise facility, swimming pool or comparable features), in accordance with all applicable laws, and in each case taking into account feasibility, environmental and other physical constraints at the site.

7. **Ratification.** Except as modified by this Agreement, the Ground Lease shall remain otherwise unmodified and in full force and effect and the parties ratify and confirm the terms of the Ground Lease as modified by this Agreement. The Ground Lease, as amended, contains the entire agreement between Landlord and Tenant as to the Real Estate, and there are no other agreements, oral or written, between Landlord and Tenant relating to the Real Estate. All future references to the Ground Lease shall mean the Ground Lease as modified by this Agreement.

8. **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. A PDF or facsimile signature shall be deemed for all purposes to be an original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

WITNESSES:

LANDLORD:

THE CITY OF NORTH MIAMI, FLORIDA

Sign: _____

Print Name: _____

By: _____

City Manager

Sign: _____

Print Name: _____

Attest: _____

City Clerk

APPROVED:

By: _____

City Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ____ day of _____, 2013, by _____ [name], as _____ [title] of the City of North Miami, Florida, a Florida municipal corporation. He/she is either [] personally known to me or [] produced a Florida driver's license as identification.

[STAMP/SEAL]

[signature of notary]

[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

WITNESSES:

TENANT:

**THE OAKS I AT BISCAYNE LANDING
CONDOMINIUM ASSOCIATION, INC.**

Sign: _____
Print Name: _____

By: _____
Name: _____
Title: _____

Sign: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ____ day of _____, 2013, by _____ [name], as _____ [title] of The Oaks I At Biscayne Landing Condominium Association, Inc., a Florida not for profit corporation. He/she is either [] personally known to me or [] produced a Florida driver's license as identification.

[STAMP/SEAL]

[signature of notary]

[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

WITNESSES:

Sign: _____
Print Name: _____

Sign: _____
Print Name: _____

OWNER:

ROYAL OAKS LANE (BISCAYNE LANDING)
- NORTH MIAMI LLC, a Delaware limited
liability company

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ____ day of _____, 2013, by _____ [name], as _____ [title] of Royal Oaks Lane (Biscayne Landing) – North Miami LLC, a Delaware limited liability company. He/she is either [] personally known to me or [] produced a Florida driver's license as identification.

[STAMP/SEAL]

[signature of notary]

[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

SCHEDULE 1

CALCULATION OF ACCRUED RENTAL FEES

Biscayne Landing

Fee Analysis

Square Feet	297,412	
Percentage	5.0%	
Applicable Square Feet	14,871	
Gross Rental Rate	\$1.00/SF	
<hr/>		
Monthly Applicable Gross Rents	14,871	
City Fee	4.0%	
Monthly Fee	595	
Number of Months	23	January 2011 through December 2012
<hr/>		
Total Amount*	13,681	



MEMORANDUM

To: Stephen E. Johnson
City Manager

From: Maxine Calloway, Director
Community Planning and Development

Date: January 15, 2013

RE: Price per Square Foot for the Oaks at Biscayne Landing

Pursuant to your request, I have compiled the price per square foot of several condos listed for sale in the Oaks at Biscayne Landing. The asking sale price for two- and three-bedroom for six properties we looked at ranged from \$215,000 (lowest priced) to \$220,000 (highest priced) for units ranging from 1,603 to 2,048 square foot. The price per square foot varies from \$107.42 to \$137.29.

The average for the remaining four units is around \$121.00 per square foot.